STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. B-12/08-600
	)	
Appeal of	)	

INTRODUCTION

Petitioners appeal a decision by the Office of Vermont Health Access (OVHA) denying Medicaid transportation reimbursement. Petitioner T.P. was granted Medicaid benefits during September 2008 retroactive to March 1, 2007. Petitioners seek transportation reimbursement for a thirteen month period starting March 1, 2007.

The decision is based upon evidence adduced at hearing and subsequent briefing.

FINDINGS OF FACT

1. T.P. is twenty-eight years old. T.P. receives Supplemental Security Income (SSI) disability benefits. During September 2008, T.P. was granted Medicaid retroactive to March 1, 2007. T.P.'s primary diagnosis is opioid dependence.

2. M.B. is T.P.'s mother. T.P. does not have a driver's license. M.B. and T.P. ascertained that the least expensive way for T.P. to access methadone treatment in West

Lebanon, New Hampshire was for M.B. to drive T.P. there. Starting in February 2007, M.B. drove T.P. daily to the West Lebanon clinic. M.B. has a full-time job. She arranged to drive T.P. to West Lebanon at 5:00 a.m. so that he could receive his medication when the clinic opened at 6:30 a.m. She was able to arrive at work by 8:30 a.m. or 9:00 a.m.

3. T.P. was admitted to the West Lebanon clinic from the Brattleboro Retreat. He admitted himself to the Brattleboro Retreat on February 4, 2007 for detoxification. This was T.P.'s fifth admission to the Brattleboro Retreat. At that time, T.P. was not receiving methadone treatment and had not received methadone treatment since July 2006.

The discharge summary from the Brattleboro Retreat dated February 8, 2007 shows that T.P. was referred to the methadone clinic in West Lebanon.

The petitioner lived closer to the Chittenden methadone clinic, but that clinic was not available to T.P. when he was discharged from the Brattleboro Retreat.

4. T.P. received methadone treatment at the Chittenden methadone treatment program for several years until he was discharged during July 2006 after an incident. T.P. tried to go back to the Chittenden clinic during August 2006, but he

was told to apply to the waiting list. Later, T.P. reapplied to the Chittenden clinic and was placed on the waiting list.

5. At the time T.P was admitted to the West Lebanon clinic, he received medical insurance through the Vermont Health Access Program (VHAP). VHAP did not and does not cover transportation costs to medically necessary treatment.

6. M.B. e-mailed P.McN. of OVHA on August 29, 2008 asking for confirmation that T.P. qualified for Medicaid transportation reimbursement. She sent the e-mail during the time frame in which T.P. was granted retroactive Medicaid. The actual cost of T.P.'s methadone treatment at the West Lebanon clinic was covered by Medicaid after being granted retroactive Medicaid.

7. On December 8, 2008, OVHA sent the petitioners a denial of their request for reimbursement of travel expenses. OVHA wrote that T.P. was not eligible because he had self-referred to the West Lebanon clinic and because he had been dismissed from the Chittenden clinic in July 2006 due to his behavior. OVHA also stated that the requested reimbursement rate was too high. Petitioners appealed this denial.

8. A hearing was held on January 15, 2009. M.B. and T.P. testified on their behalf. P.McN. testified for OVHA.

9. M.B. testified that her son, T.P., is addicted to heroin in addition to being diagnosed with an anxiety disorder and a personality disorder. She testified that T.P. was at the Brattleboro Retreat in February 2007 and that T.P. was referred to the West Lebanon clinic by Dr. K. of the Brattleboro Retreat. Although the Chittenden clinic is closer to T.P., the Chittenden clinic was not an option.

T.P. was discharged from the Chittenden clinic in July 2006 (seven months prior to his admission to the Brattleboro Retreat and subsequent referral to the West Lebanon clinic). M.B. testified that she had been surprised when the Chittenden clinic asked T.P. to leave. M.B. was authorized by T.P. to communicate with the Chittenden clinic and was under the impression that T.P. could return to the clinic after six months. In her efforts to have T.P. reenrolled at the Chittenden clinic, M.B. sought help from P.L. and Dr.M of the Vermont Office of Drug and Alcohol Programs, but their efforts were not successful. Petitioners preferred that T.P. attend the Chittenden clinic.

M.B. testified that she was told by the Chittenden clinic during February 2007 that they had a long wait list and that T.P. had to reapply for admission and be placed on the wait list. M.B. questioned Dr. K. about T.P.'s need for

methadone and possible options. M.B. stated that Dr. K. indicated T.P. has a life-long need for methadone and that Dr. K. encouraged her to transport T.P. to West Lebanon. She stated that the West Lebanon clinic was the only choice T.P. had for methadone treatment.

M.B. contacted the State starting March 2007 to see what resources were available for transportation. M.B. had a professional relationship with C.LaW. (then AHS Secretary) and sought referral advice. M.B. e-mailed C.LaW on February 20, 2007 seeking information and noting that T.P. was 120 on the Chittenden clinic waiting list. C.LaW. referred M.P. to S.H. of OVHA for information.

M.B. testified she did not remember the name of the person she first contacted but that she was told that if T.P. received Medicaid, Medicaid can pay for transportation. It was suggested that T.P. apply for disability.

M.B. described the symptoms T.P. has when he is not on methadone. She stated his bones ache and he has difficulty getting out of bed. He will not leave home and is depressed. Methadone causes these symptoms to subside.

During the time in question, M.B. drove 59,475 miles so that T.P. could receive his treatment. It should be noted

that T.P. now has a volunteer driver who is paid by Medicaid to transport T.P. to treatment.

10. T.P. confirmed the accuracy of his mother's testimony regarding his symptoms when he is not receiving methadone.

11. P.McN. administers the Medicaid transportation program. He took over this position approximately one year ago.

He testified that M.B. contacted him after he took his current position. He first told M.B. that she would be reimbursed her transportation costs. He testified that M.G., OVHA reimbursement, told him that if the facts held true and a referral was in place, transportation costs could be reimbursed. He had subsequent discussions with S.B., OVHA communications supervisor, who indicated that the reimbursement claim should be denied. He then issued the December 8, 2008 Notice of Decision. The decision was based on OVHA's belief that T.P. self-referred to West Lebanon and upon his prior dismissal from the Chittenden clinic.

P.McN. stated that the reimbursement rate for family member is 18 cents/mile. He stated that M.B. was not an enrolled provider.

ORDER

OVHA's decision is reversed.

REASONS

Congress created the Medicaid program as a cooperative federal and state program to:

> furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self care. . .
>
> 42 U.S.C. § 1396.

See Meyers v. Reagan, 776 F.2d 241, 243 (8th Cir. 1985).

State participation is voluntary. Once a state elects to participate in the Medicaid program, the state must submit a plan and comply with certain Congressional requirements. 42 U.S.C. § 1396a, Harris v. McRae, 448 U.S. 297, 301 (1980). The Medicaid program is a remedial act meaning that its provisions must be liberally construed in favor of recipients seeking necessary medical care. Christy v. Ibarra, 826 P.2d. 361 (Court of Appeals, Co. 1991).

Transportation is a mandatory service and the state plan must address how to ensure necessary transportation for recipients to access their medical providers. 42 CFR Part

440, 42 C.F.R. § 431.53(a). As part of the State Medicaid plan, OVHA promulgated M755. M755 states:

> Transportation
>
> Transportation to and from necessary medical services is covered and available to eligible Medicaid recipients on a statewide basis.
>
> The following limitations on coverage shall apply:
>
> 1. Prior authorization is required. (Exceptions may be granted in a case of a medical emergency.)
>
> 2. Transportation is not otherwise available to the Medicaid recipient.
>
> 3. Transportation is to and from necessary medical services.
>
> 4. The medical service is generally available to and used by other members of the community or locality in which the recipient is located. A recipient's freedom of access to health care does not require Medicaid to cover transportation at unusual or exceptional cost in order to meet a recipient's personal choice of provider.
>
> 5. Payment is made for the least expensive means of transportation and suitable to the medical needs of the recipient.
>
> 6. Reimbursement for the service is limited to enrolled transportation providers.
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> 7. Reimbursement is subject to utilization control and review in accordance with the requirements of Title XIX.
>
> 8. Any Medicaid-eligible recipient who believes that his or her request for transportation has been improperly denied may request a fair

> hearing. For an explanation, see the "Fair Hearing Rules" listed in the Table of Contents.

In petitioner's case, prior authorization is not necessary. Prior authorization is waived because transportation "was provided prior to the determination of Medicaid eligibility and within the retroactive coverage period". M106.4. Because this is a reimbursement case rather than an application for transportation services, we need to look at the information today and apply the criteria to the information at hand.

T.P. did not have other transportation available to him. He does not have a driver's license. T.P. used the simplest and most accessible transportation available to him, his mother. Now, he uses a volunteer driver who is paid by Medicaid.

The threshold issue is M755(3) or whether transportation was to a "necessary medical service". "Medically necessary" is defined in M107 to include services that are:

> . . .in terms of type, amount, frequency, level, setting and duration to the beneficiary's diagnosis or condition. Medically necessary care must be consistent with generally accepted practice parameters. . .and,
>
> 1. help restore or maintain the beneficiary's health; or

2. prevent deterioration or palliate the beneficiary's condition, or

3. prevent the reasonably likely onset of a health problem or detect an incipient problem.

OVHA is not disputing that methadone treatment is an appropriate service or treatment for opioid users but rather whether T.P.'s transportation costs should be covered to the West Lebanon clinic. Their dispute is centered on their belief that T.P. self-referred to the West Lebanon clinic since a referral from a medical provider gives the underlying medical basis for the needed service or treatment.

Petitioners have provided documentation provided from the Brattleboro Retreat showing that the referral for methadone treatment was not a self-referral but part of T.P.'s discharge plan. The decision whether a particular service or treatment is medically necessary is in the purview of the treating physicians. Pinneke v. Preisser, 623 F.2d 546, 550 (1980). In fact, the retroactive Medicaid payment for the treatment provided by the West Lebanon clinic buttresses the finding of medical necessity.

In addition, OVHA argued that M.B. should not be reimbursed because T.P. did not attend the closest methadone clinic, the Chittenden clinic. That clinic was not available to T.P. because of a prior discharge in July 2006. In the

intervening time, T.P. was hospitalized and referred to a clinic with openings for methadone treatment. T.P. took steps to obtain closer treatment including application to the waiting list at the Chittenden clinic.

The reasons for T.P.'s 2006 discharge are not relevant to the application of the criteria in M755 seven months later. In addition, there is nothing in the regulations to support OVHA's position that T.P. did not avail himself of closer treatment. Unfortunately, there are not sufficient resources in Vermont to ensure that each individual needing methadone treatment can obtain that treatment at a clinic closest to their residence.

The remaining issue is whether M.B. should be considered an enrolled transportation provider. Because we are dealing with a reimbursement case, we need to look at whether M.B. would have fit the criteria for a personal choice driver when she started transporting T.P.

OVHA developed a Transportation Procedure Manual to provide guidance and criteria for the implementation of the Medicaid transportation regulation. The Manual is not adopted through the Administrative Procedures Act and does not have the same force and effect as properly promulgated regulations. However, the Manual does provide guidance.

A personal choice driver is a person who meets the definition of a volunteer driver but is not provided through a broker. Section 1.1.2. A volunteer driver includes a person who does not live with the Medicaid recipient and uses his/her own car. There is no prohibition against a parent of an adult child acting as a volunteer driver. Section 1.1.2. Thus, M.B. can fit into the definition of a volunteer driver.

Ordinarily, Medicaid pays beneficiaries for transportation to the nearest methadone facility unless space is not available and the beneficiary is on the waiting list. Section 4.8. Petitioners have supplied this information through the fair hearing process. M.B. should be considered an enrolled personal choice driver. OVHA has indicated that the appropriate rate is 18 cents/mile.

Accordingly, OVHA's decision to deny Medicaid transportation is reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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